No. 07-22-00341-CV

In the Seventh Court of Appeals
Amarillo, Texas

In re CITY OF AMARILLO, TEXAS

CITY OF AMARILLO,
Appellant/Cross-Appellee

v.

ALEX FAIRLY,
Appellee/Cross-Appellant

On Appeal from the 320th District Court
Potter County, Texas
Trial Court Case Number: 110998-D-CV

CROSS-APPELLANT'S REPLY BRIEF

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SUMMARY OF THE ARGUMENT

This Court need not resolve the statutory interpretation question in this appeal to conclude the City did not comply with section 1431.008(b). The City's brief shows it did not even levy a tax in the Ordinance.

The City fails to define the word "levy." In Texas law, the definition is clear—to levy is to impose a tax rate. David B. Brooks explains in *Texas Practice Series, Municipal Law and Practice*, "The levy of taxes and the assessment of taxes are generally interchangeable concepts, although, strictly speaking perhaps, the levy of taxes is a vote by the governing body of a specified tax rate and the assessment of taxes applies that rate to taxable property represented in the tax rolls." David B. Brooks, Section 9.09 Tax code–Levy, 22 *Tex. Prac., Municipal Law and Practice* § 9.09 (4th ed. Nov. 2022 Update). Using the City's preferred dictionary, the definition of levy is "[t]o impose or assess (a fine or tax) by legal authority." BLACK'S LAW DICTIONARY 919 (11th ed. 2019). The City contends setting a tax rate is "assessing" a tax while "levying" a tax is a different, undefined action, but Black's Law Dictionary defines levying as assessing, and Texas authority consistently states that levying a tax involves establishing a tax rate. *See, e.g.*, *Jones v. Turner*, 646 S.W.3d 319, 321 (Tex. 2022); *Voorhies v. City of Houston*, 7 S.W. 679, 683 (Tex. 1888). The City admitted it did not assess a tax in the Ordinance, and the Ordinance does not set a tax rate, so the Ordinance does not levy a tax.

But even presuming for the sake of argument that the City levied a tax in the Ordinance, the City did not impose a tax within the meaning of section 1431.008(b) because imposing a tax requires more than just levying—it requires assessment, levy, and collection. The City admits it did not assess or collect a tax, so under the correct interpretation of 1431.008(b), it failed to comply with the statute.

ARGUMENT AND ANALYSIS

The City failed to comply with 1431.008(b) under both its own incorrect interpretation of that statute and under Mr. Fairly's interpretation because it failed to levy a tax. While the City argues that it cannot comply with the Texas Tax Code under Mr. Fairly's interpretation, the City cannot identify a single provision of the Tax Code that it would be forced to violate. The City should not be allowed to use the Tax Code's protections for taxpayers as a shield to its own abuse of the taxing power.

A. The City's argument that it complied with 1431.008(b) by levying a tax fails because the City did not levy a tax in the Ordinance.

Admitting that it did not assess or collect any tax, the City hangs its entire case on the fact that Ordinance 7985 uses the word "levy."[1] *See Br. of Cross-App.* at 13 (highlighting the word "levy" twice in the Ordinance to argue that "Ordinance 7985 complies with the statute because it expressly 'levied' the ad valorem tax"). Even presuming for the sake of argument that the City's interpretation of the statute is correct (it is not), the City still did not comply with section 1431.008(b) because it did not even levy a tax. Saying the word "levy" is not an incantation that magically makes a document into a valid tax levy under Texas law. Over a hundred years of caselaw from the Supreme Court of Texas and other Texas authorities demonstrate that to levy a tax, an entity must establish a tax rate. The Ordinance does not establish a tax rate, so it does not levy a tax.

1. Courts look to the substance of legislation rather than its mere words to determine whether it is a tax levy.

Merely calling a municipal action a levy does not make it a levy. In the tax context, courts look at the substance of legislation and not the words. For instance,

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[1] The City admits that section 1431.008(b) applies because the tax notes anticipated by the Ordinance were to be paid out over a period of seven years. *See Br. of Cross-App.* at 5.

the Supreme Court of Texas evaluates the substance of assessments to determine whether they are "fees" or "taxes" and does not merely accept assessments as fees based on "the name by which they are designated." *Tex. Boll Weevil Eradication Found., Inc. v. Lewellen*, 952 S.W.2d 454, 461 (Tex. 1997), *as supplemented on denial of reh'g* (Oct. 9, 1997) (articulating test to determine whether an assessment is an occupation tax or a regulatory fee that looks to the purpose of the fee and not the name) (internal quotation and citation omitted). Thus, the City cannot "clearly" establish it levied merely by pointing to a word in the Ordinance. *Br. of Cross-App.* at 13.

2. Levying a tax requires imposing a tax rate.

The City does not ever define the word "levy" in its Cross-Appellee brief, despite the fact that levying is the only possible grounds on which the City asserts that the Ordinance imposed a tax. The City relies on Black's Law Dictionary to define the words "impose" and "assess," but it ignores Black's Law Dictionary's definition of levy. The definition of levy is "[t]o impose or assess (a fine or tax) by

legal authority." BLACK'S LAW DICTIONARY 919 (11th ed. 2019). Assess, in turn, is defined by Black's Law Dictionary as establishing a tax rate. *Id.*

The Supreme Court of Texas, the Texas Constitution, other Texas courts, and legal commentary also define levy. For all these authorities, levying a tax means imposing a tax rate.

For over a hundred years, the Supreme Court of Texas has connected levying with imposing a specific tax rate. *See, e.g.*, *Jones*, 646 S.W.3d at 321 ("The standard method of designating the amount of the tax levy is in terms of an amount per $100 of the value of the property being taxed (e.g., in 2010, the tax rate was $0.63875 per $100 of valuation). . . . [The Charter] provides that, absent voter approval to the contrary, the City shall not 'levy ad valorem taxes at combined rates expected to result in total ad valorem tax revenues . . . that exceed the lower of' two different 'indexed' amounts."); *Voorhies*, 7 S.W. at 683 ("We are further of the opinion, if it be necessary to levy a tax exceeding 2 1/2 per cent., in order to raise funds to pay such debts, that section 6, art. 11, gives the power to do this."); *Earle v. City of Henrietta*, 43 S.W. 15, 17 (Tex. 1897) ("By the terms of this article the council of any city may levy any rate of tax not exceeding one-fourth of 1 per cent., which levy must be made by ordinance."). In contrast to the City's notion that

levying means merely announcing an intent to tax at some point, the Supreme Court of Texas connects levying with establishing a tax rate.

Along with the Supreme Court of Texas, the Texas Constitution also links levies and tax rates:

> *The several counties of the State are authorized to levy ad valorem taxes* upon all property within their respective boundaries for county purposes, except the first Three Thousand Dollars ($3,000) value of residential homesteads of married or unmarried adults, including those living alone, *not to exceed thirty cents (30¢) on each One Hundred Dollars ($100) valuation*, in addition to all other ad valorem taxes authorized by the Constitution of this State, provided the revenue derived therefrom shall be used for construction and maintenance of Farm to Market Roads or for Flood Control, except as herein otherwise provided.

Tex. Const. art. VIII, § 1-a (emphasis added). The Texas Constitution explicitly links the term levy with a specific rate. Thus, merely saying the word levy without actually establishing a tax rate does not levy a tax.

Other Texas courts also discuss levies in connection with specific tax rates. In *Mercedes Independent School District v. Nolen*, the court of appeals examined meeting notes in which a motion was made to impose a specific tax rate. 536 S.W.2d 662, 663–64 (Tex. Civ. App. 1976). The court calls this action a levy: "We presume that by this language the board intended to levy a tax of $1.85 on each $100.00 of property within the taxing district." *Id.* at 664. Then, the court rejected the levy because the "*levy* of an annual ad valorem tax by a board of trustees of an independent school district is required to be by ordinance rather than by motion or

resolution." *Id.* (emphasis added); *see also Amaimo v. Carter*, 212 S.W.2d 950, 955 (Tex. Civ. App. 1948), *writ ref'd n.r.e.* ("The word levy as applied to taxation has a variety of meanings, but strictly speaking refers to a legislative act, whether state or local, which determines that a tax shall be laid and fixes its amount . . . .") (internal quotations and citations omitted). As *Nolen* shows, levying is not merely stating the desire to have a tax—it means actually establishing a tax rate for people to pay.

Finally, legal commentary on Texas tax law confirms that levying means establishing a tax rate. For instance, Jay Howell notes in *Texas Practice Series, Property Taxes*, "In its narrowest sense, the word levy refers to the action of the governing body in fixing a tax rate for the tax year involved. In other senses, it is sometimes used instead of the word assess and it is also sometimes used instead of summary seizure." Jay D. Howell, Jr., Section 656 Levy, 21 *Tex. Prac., Property Taxes* § 656 (4th ed. Nov. 2021). Similarly, in the *Texas Practice Series, Municipal Law and Practice*, David B. Brooks describes a levy as similar to assessment. He notes, "[t]he levy of taxes and the assessment of taxes are generally interchangeable concepts, although, strictly speaking perhaps, the levy of taxes is a vote by the governing body of a specified tax rate and the assessment of taxes applies that rate to taxable property represented in the tax rolls." David B. Brooks, Section 9.09 Tax

code–Levy, 22 *Tex. Prac., Municipal Law and Practice* § 9.09 (4th ed. Nov. 2022 Update).[2]

This definition of the word "levy" is the only definition that gives any meaning to the word. Property taxes already exist in Amarillo. The Ordinance cannot "levy" a tax by saying that there will continue to be property taxes in Amarillo in the future. Setting the rate is the only mechanism by which an Ordinance could levy ad valorem taxes. The City does not dispute this argument, but merely notes that it should not be required to set a rate because "setting a tax rate involves an extraordinarily complicated months-long process" and "only happens once a year" under the default schedule established in the Tax Code. *Br. of Cross-App.* at 18.

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[2] The City causes confusion between assessing and levying by failing to define the latter and erroneously defining the former. The City defines assessment as determining the value of property or setting a tax rate. *Br. of Cross-App.* at 15 n.4. The former cannot be true in the Texas Tax Code because Chapter 26 deals with assessments whereas Chapters 23-25 deal with property valuation, which the Code calls "appraisal." TEX. TAX CODE ch. 23-26. Setting a tax rate is part of assessment under the Tax Code, *e.g.*, TEX. TAX CODE § 26.05, but assessing also involves determining the amount of tax specific properties must pay. *See id.* § 26.1115 (describing how to calculate "the amount of tax due on the property"). When assessing is setting a tax rate, cases and commentary have observed they are used synonymously. *Amaimo*, 212 S.W.2d at 955 ("[T]he word 'assess' is synonymous with the word 'levy.'"); Howell, *Tex. Prac., Property Taxes* (noting levy and assess are sometimes used interchangeably). But the point remains—to levy, the City must set a tax rate, and the Ordinance failed to do that and thus failed to levy.

While it would be more convenient for the City if it could "levy" just by saying the word a few times, Texas law requires actual action.

3. The Ordinance does not levy a tax.

The City contends that all it had to do under Section 1431.008(b) is levy a tax. While Cross-Appellant disagrees, even presuming for the sake of argument that the City was correct, the City did not comply with the statute because the Ordinance does not levy a tax because it does not set any particular tax rate. The City has failed to levy because it has merely announced that a tax that used to exist in Amarillo will still exist in Amarillo. *Br. of Cross-App.* at 28. Even under the City's incorrect interpretation of section 1431.008(b), the City did not comply with section 1431.008(b) because the City did not levy a tax.

B. The City did not comply with section 1431.008(b) because it did not assess and collect a tax.

If and only if this Court concludes the City levied a tax simply by using the term, then the Court must determine the meaning of the term "impose" in section 1431.008(b). The City's proposed unstable definition of "impose" transmogrifies Texas's plain meaning jurisprudence and conflicts with the Legislature's explicit definition of the term.

The Legislature revised section 1431.008(b) to clarify the actions required when a governing body seeks to issue anticipation notes secured by debt that would be paid by taxes over a period of years. The Legislature took a statute that used three

different words with similar meanings (assess, collect, and levy) and revised the statute to use one consistent term (impose). By using one, consistent term, the Legislature indicated that it intended to encompass the meanings of all three prior terms. To remove all doubt, the Legislature drafted a Revisor's note stating that the meaning of the new term (impose) encompasses the meanings of the previous three.

1. "Impose" means to assess, levy, and collect an ad valorem tax.

The City did not impose a tax in the Ordinance because imposing a tax requires establishing a specific, assessed, collectible tax.

a. Assessment, levy, and collection are all a part of the process of imposing a tax.

The Legislature defined the word "impose" when it stated that the term includes "assessment, levy, and collection of an ad valorem tax." TEX. GOV'T CODE § 1431.008 (Revisor's Note). The definition is consistent with Black's Law Dictionary, Texas caselaw, and Chapter 26 of the Texas Tax Code. *See Impose*, BLACK'S LAW DICTIONARY 759 (11th ed. 2019); *City of Houston v. Richard*, 21 S.W.3d 586, 589–90 (Tex. App.—Houston [1st Dist.] 2000, no pet.); TEX. TAX CODE § 26.05(e).

The City's arguments that the term impose is sometimes used simultaneously with the terms assess, levy, or collect is unavailing. The Legislature defined those terms as *part* of what it means to impose a tax. At times it is necessary to refer

specifically to each part. Section 26.05(e) of the Texas Tax Code, for example, discusses what happens when taxes are imposed by a taxing unit. TEX. TAX CODE § 26.05(e). The subsection provides that a person "is entitled to an injunction restraining the collection of taxes" if the taxing unit has not complied with certain requirements. *Id.* The subsection provides that the property owner is "not required to pay the taxes imposed by a taxing unit on the owner's property while an action filed by the property owner to enjoin the collection of taxes imposed by the taxing unit on the owner's property is pending." *Id.*

While both terms are used within the section, the section shows that the more specific term (collect) is a part of the broader term (impose). Under 26.05(e), if the term "impose" did not include collection, there would be no need for an injunction enjoining collection. It is precisely because the term "impose" includes collection that the Legislature explicitly stated that the collection component of imposing a tax could be enjoined during a challenge.

b. The City's definition of "impose" has no plain meaning.

The Legislature offered a stable definition of the term "impose." The Legislature explicitly stated that the term "impose" includes "the assessment, levy, and collection of an ad valorem tax." Revisor's Report at 475:18-476:13, *A Nonsubstantive Revision of the Statutes Relating to Public Securities for Government Code*, Title 9 Public Securities, Volume 2 (1999). The City argues that

this note means simply that "assess," "levy," and "collect" are all possible definitions for the term "impose" within a larger set of potential definitions and that the term can mean any of these three terms, or any other term within the possible set of definitions for the word (since under the City's view "assess," "levy," and "collect" are simply included within the set of possible definitions for the word).

This argument takes liberties with the Revisor's Note. The Revisor's Note does not say that the *definitions* of the word "impose" include "assess," "levy," and "collect." The Note states the *term* "impose" *itself* "includes the assessment, levy, and collection of an ad valorem tax." TEX. GOV'T CODE § 1431.008 (Revisor's Note). The term "impose" does not sometimes include assessment, levy, and collection of an ad valorem tax, but those three are all always included in the meaning of the term impose. Under the City's reading of the term "impose," as meaning simply "levy," the term does not include "assessment" and "collection." This is contrary to the text of the Revisor's Note.

Not only is the City's definition of the word "impose" unstable, but it has not cited a single case where a Texas court held a statutory term has multiple different meanings within the same section.[3] Under the City's proposed interpretation, there is no stable or consistent meaning of the term "impose," and courts and parties must

[3] To the extent the City contends its definition of "impose" is "establish," it must argue that "establish" has different meanings in different contexts.

reach for interpretation tools beyond the plain meaning of the words used in the statute to determine the meaning of the statute. This tortured statutory interpretation turns plain meaning analysis on its head.

If the City is correct, then the Legislature took words with separate and distinct meanings and revised the statute to make it unclear by using an ambiguous term. Under the City's view, courts cannot determine when "impose" means assess versus when it means collect, or levy, by looking to the dictionary definitions of the word. Courts must look elsewhere. Accepting the City's view requires rejecting Texas's bedrock jurisprudential principle that courts can determine the meaning of statutes by looking to the meaning of the words used in the statutes.

There is no need to uproot Texas jurisprudence. The Legislature did not take more specific terms and revise the statute to make it unclear. Instead, the Legislature revised the statute to make clear that the different terms in the statute had the same meaning. The Legislature indicated this by using one consistent term (impose) for the three (assess, levy, and collect) and defining the term (impose) to encompass all three.

2. The term "impose" has the same meaning in both places in section 1431.008.

The different tenses in section 1431.008(b) do not imply the term "impose" has different meanings. *See Brief of Cross- App.* at 11.

Section 1431.008(b) provides:

> A governing body that pledges to the payment of anticipation notes of an ad valorem tax *to be imposed* in a subsequent fiscal year shall *impose* the tax in the ordinance or order that authorizes the issuance of the notes."

TEX. GOV'T CODE § 1431.008(b). The first use of the term "to be imposed" describes when the statute applies. It states that "[a] governing body that pledges to the payment of an ad valorem tax *to be imposed* in a subsequent fiscal year . . ." *Id.* The phrase "*to be imposed in a subsequent fiscal year*" limits the application of the statute to anticipation note packages that are so large they will span more than one fiscal year. The phrase indicates the statute does not apply to anticipation notes that will be paid off in a single fiscal year. This limitation makes sense because anticipation note packages that can be paid off in the current fiscal year will not be financed by an increased tax rate.

The second usage of the word "impose" requires the governing body actually "impose" the tax in the ordinance. A governing body imposes a tax with it levies, assesses, and collects the tax. Levy, assess, and collect a tax does not mean the tax funds are magically completely paid to the City, but the City must actually use its power to impose a current, specific, tax and collect it. If the tax is a tax that will be imposed over multiple years, as any tax to which section 1431.008 must be, this means that the terms of the tax will be specified, the amount owed determined and the City will begin to collect the tax on the terms described in the ordinance or order.

Statutory Language	Meaning	Purpose
A governing body that pledges to the payment of anticipation notes of an ad valorem tax *to be imposed* in a subsequent fiscal year . . .	The statute applies to an anticipation note if and only if the governing body will fund the anticipation note using taxes that will be in continuing effect (levied, assessed, and collected) over multiple years.	This language limits the application of the section to debt secured by taxes in the future. If the governing body can pay the anticipation note using available funds, there is no need to take the steps required to impose a tax because the citizens will not be exposed to any additional tax expense beyond what has already been paid.
. . . shall *impose* the tax in the ordinance or order that authorizes the issuance of the notes.	The governing body must impose the actual tax, including beginning to levy, assess, and collect the tax as the tax becomes due.	Requiring the governing body to impose the tax necessitates the governing body take the steps necessary to impose the tax, including providing the citizens with the appropriate notice, as outlined in the Texas Tax Code.

The City wrongly states, "By definition, a tax pledged in an ordinance to be assessed, levied, and collected in a subsequent fiscal year cannot be assessed, levied, and collected at the moment the ordinance is passed. *See Br. of Cross-App.* at 10. If the tax will be in effect for multiple years, the City can levy, assess, and collect it at the moment it is passed with additional amounts due at future scheduled intervals.

The statute anticipates situations in which a governing body may choose to pay off an anticipation note over a period of years. Indeed, the statute exists to address that situation. The reason it is necessary for the governing body to impose the tax in the order or ordinance authorizing anticipation notes that may be paid off over a period of years in the future is to ensure the governing body follows the protections for the citizens in the tax code when establishing a new tax. If the governing body were not required to impose the tax in the order or ordinance, the governing body could incur a debt and obligate the citizenry to pay without respecting the protections for taxpayers enshrined in the Texas Tax Code. If a governing body intends to obligate its citizenry, it must take the steps outlined in the Texas Tax Code, respecting the rights of its citizens before it undertakes the obligation.

The statute exists exactly to prevent the type of abuse that occurred in this case where the City sought to obligate voters without their consent. Actions like the City's provide the voters no real choice in the future when tax rates are set but the citizenry already owes the money. Texas law protects taxpayers from having taxes foisted upon them without due process. *See generally* Tex. Const. art. 8; Tex. Const. art. 8 § 21. There is nothing absurd about a construction of the statute that gives proper deference to those rights by prohibiting the assumption of tax-pledged debt without notice to the taxpayers who will pay for it.

3. A plain language interpretation of section 1431.008(b) does not yield an absurd result.

This Court should reject the plain language interpretation of section 1431.008(b) proposed by Cross-Appellant only if "'the absurdity and injustice of applying the provision to the case would be so monstrous, that all mankind would, without hesitation, unite in rejecting the application.'" *Union Carbide Corp. v. Synatzske*, 438 S.W.3d 39, 66 (Tex. 2014) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 237 (2012) and Joseph Story, *Commentaries on the Constitution of the United States* § 427 (1833)). This is a high threshold, *id.*, and tests "whether 'a rational Legislature could have intended' that result." *Id.* at 65 (quoting *Combs v. Health Care Servs. Corp.*, 401 S.W.3d 623, 631 (Tex. 2013); *see also id.* ("If we can conceive of a rational purpose for the requirement, we cannot strike down the statute as 'absurd.'") (citing *Nat'l Plan Adm'rs, Inc. v. Nat'l Health Ins. Co.*, 235 S.W.3d 695, 701 (Tex. 2007). Here, that high bar is not met; in fact, a plain meaning interpretation of section 1431.008(b) results in sound tax policy.

a. The City can collect taxes in the same Ordinance that authorizes anticipation notes.

The City first claims that Cross-Appellant's interpretation would render tax anticipation notes unnecessary because the City would have to collect the taxes in the same Ordinance that authorizes the tax anticipation notes. *Br. of Cross-App.* at

14. The City, however, never defines "collection" or describes what it entails. That failure could explain its confusion. This Reply has already demonstrated why the City's reading of Mr. Fairly's interpretation is flawed and how tax anticipation notes would function under it. *See supra* 13–14. The City gives no explanation for why it would not wait for its usual schedule at which budgets and taxes are set, if that's what it considers necessary to impose a tax. If the City does not impose taxes until the fall, then that is when it should take up a tax note payable by taxes imposed over more than one year. There is nothing absurd about this result. It is firmly in line with the requirement that the government must respect the rights of the governed. See TEX. GOV'T CODE § 552.001 (stating, "government is the servant and not the master of the people"); Tex. Const. art. 1, § 2.

b. The Texas Tax Code does not prohibit the City from complying with a plain meaning interpretation of section 1431.008(b).

Second, the City argues that a plain meaning interpretation is absurd because section 26.05(a)(1)-(2) and 25.04(e)(3) "prohibit[] the City from setting a tax rate that accounts for debts that will come due in any year other than the upcoming year." *Br. of App.* at 15. Simply reading the statutes confirms, however, that they contain no prohibitions whatsoever. Section 26.05(a)(1)-(2) sets a date by which the City must adopt a tax rate for the current year; it does not prohibit the City from doing anything. TEX. TAX CODE § 26.05(a)(1)-(2) ("The governing body must adopt a tax

rate before the later of September 30 or the 60th day after the date the certified appraisal roll is received by the taxing unit . . . ."). Section 26.04(e) also merely sets a deadline by which the City must act—not a restraint on acting earlier. *Id.* § 26.04(e) ("By August 7 or as soon thereafter as practicable, the designated officer or employee shall . . . ."). The City's argument that these sections "prohibit" the City from setting a tax rate in an Ordinance authorizing a tax anticipation note flatly misrepresents what the statutes say, so the City's argument that a plain meaning interpretation makes it "impossible" for the City is wrong. Again, the City can take up tax anticipation notes in the fall when it sets its budget and taxes.

c. The City can meet the deadlines in the Tax Code.

Third, the City describes the deadlines by which it must act to impose taxes and says that the deadlines prevent it from imposing a tax in the Ordinance. *Br. of Cross-App.* at 16-18. The City never explains and cannot explain, however, why deadlines to act are prohibitions on acting sooner. In fact, the City admits that all of the items in their list could be accomplished before the deadlines the statute prescribes except for requiring taxpayers to pay before February 1. *Id.* at 18 (citing TEX. TAX CODE § 31.02). The section the City cites, however, only establishes the delinquency date for paying taxes. Collection efforts do not require taxpayers to be delinquent. Mailing the tax bill is collection, as shown by the fact mailing the bill is the first item discussed under Chapter 31 of the Tax Code—the "Collections"

chapter. TEX. TAX CODE § 31.01(a) (stating "the assessor for each taxing unit shall prepare and mail a tax bill to each person in whose name the property is listed on the tax roll and to the person's authorized agent"). This collection activity does not require any taxpayer be delinquent. Thus, the City's only supposed barrier to complying with the plain language of section 1431.008(b) is no barrier at all.

d. It is absurd for the City to use the protections in Chapter 26 of the Texas Tax Code as a justification to avoid accountability.

Finally, the City closes its absurdity argument by asserting that the City will be held accountable to voters every year that the City taxes citizens to repay the debt it took out without their approval and against their express wishes. *Br. of Cross-App.* at 19. This, however, does not respond to Mr. Fairly's argument—incurring debt without any immediate consequences reduces the electoral risk to politicians. *Br. of Cross-Appt.* at 24 n. 9. Connecting a politician's act of increasing taxes six years after a tax anticipation note to the note itself is difficult for normal voters, and the City fails to show how taxes imposed years later hold politicians accountable. And, what the City never responds to is the disconcerting incongruity of using Chapter 26 of the Tax Code—which is meant to protect taxpayers—as a justification to abuse its taxing power by permitting the City to take out tax-pledged debt – debt that will irrefutably have tax increase consequences - without accountability. *Br. of Cross-App.* at 21, 23. The City proposes a fundamentally unsound tax policy—allow

politicians to take out debt without the accountability of having to impose taxes to ensure payment of that debt. A plain meaning interpretation of section 1431.008(b) reflects rational policymaking, and all mankind would not, without hesitation, unite in rejecting the application, so it does not yield absurd results.

CONCLUSION AND PRAYER

The City did not impose a tax in the Ordinance. First, even under the City's reading of section 1431.008(b), the City did not impose a tax because it did not levy a tax. But even if the City had levied a tax, the City admits it did not assess or collect a tax, both of which are required to impose a tax under section 1431.008(b). *Br. of Cross-App.* at 5.

The words in section 1431.008(b) required the Ordinance to impose a tax. Because the Ordinance did not impose a tax, the trial court erred in failing to award Cross-Appellant a declaration that the Ordinance violates section 1431.008(b). Accordingly, Cross-Appellant respectfully requests that this Court render judgment that Cross-Appellant is entitled to declaratory relief and affirm the trial court's judgment as modified. Cross-Appellant further prays for any and all additional relief to which he may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief of Appellant was prepared using Word in Microsoft Office 365, which indicated that the total word count (exclusive of those items listed in rule 9.4(i)(1) of the Texas Rules of Appellate Procedure, as amended) is 5,573 words.

/s/ Jillian L. Schumacher
Jillian L. Schumacher

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I certify that on March 13, 2023, a true and correct copy of the foregoing document was delivered via electronic filing, email, or certified mail, return receipt requested, to all known counsel of record and interested parties.

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